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No. 00-422

In the Supreme Court of the United States

NATIONAL WHISTLEBLOWER CENTER, PETITIONER

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Nuclear Regulatory Commission erred in denying petitioner's application to intervene in a nuclear power plant license renewal proceeding, when petitioner had notice of the rules governing such proceedings and failed to meet the twice-extended deadline for filing its contentions.

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OPINIONS BELOW

The April 11, 2000, opinion of the court of appeals (Pet. App. 1a-19a) is reported at 208 F.3d 256. The vacated November 12, 1999, opinion of the court of appeals (Pet. App. 24a-46a) is unreported. The final decision of the Nuclear Regulatory Commission (Pet. App. 47a-76a) is reported at 48 N.R.C. 325.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 2000. A petition for rehearing was denied on June 15, 2000. The petition for a writ of certiorari was filed on September 13, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Respondent United States Nuclear Regulatory Commission (NRC or Commission) is responsible for, among other matters, maintaining a regulatory program governing the safe construction and operation of commercial nuclear power reactors in this country. To accomplish its mission, the Commission issues licenses, rules, and orders covering various safety and environmental subjects. This action arose out of an application by the Baltimore Gas & Electric Company[1] to renew its NRC-issued licenses to operate the Calvert Cliffs nuclear power plant in Maryland.

1. The Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, embodied Congress's resolve to let the private sector play the lead role in providing energy from nuclear fission for commercial and other non-military uses. To further this goal in a manner protective of public health and safety and the common defense and security, Section 103 of the Act, 42 U.S.C. 2133, establishes licensing requirements for commercial nuclear reactors. Pursuant to subsection 103(c), reactor licenses are "issued for a specified period * * * depending on the type of activity to be licensed." For licenses to operate nuclear reactors, Congress established 40 years as the maximum allowable period. Section 103(c) further provides that operating licenses "may be renewed upon the expiration of such period." The statutory 40-year period does not govern plants (such as Calvert Cliffs) that are licensed for "research

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[1] Baltimore Gas and Electric Company was a party-respondent before the court of appeals. Subsequently, as a result of a corporate reorganization, Calvert Cliffs Nuclear Power Plant, Inc., became owner and operator of the Calvert Cliffs nuclear power plant, and is a respondent in this Court.

and development." 42 U.S.C. 2134. But an NRC rule imposes the same 40-year limit on operating licenses for such plants. See 10 C.F.R. 50.51(a).

In 1982, the NRC staff convened a workshop to identify and resolve issues related to plant aging. The issues to be addressed included, among others, the timing for resolution of policy, technical, and procedural issues, the earliest and final dates that would be appropriate for filing an application to renew a license, and procedural changes that would be necessary to consider renewal applications. See 51 Fed. Reg. 40,334 (1986). The Commission ultimately decided to proceed by rulemaking and published an Advance Notice of Proposed Rulemaking seeking public comment on an NRC publication, "Regulatory Options for Nuclear Plant License Renewal," NUREG-1317. See 53 Fed. Reg. 32,919 (1988).

After conducting numerous public conferences, meetings, and workshops with interested parties, the NRC issued a proposed rule. See 55 Fed. Reg. 29,043 (1990). In 1991, the Commission published a final rule providing procedures and standards for license renewals. See 56 Fed. Reg. 64,943 (1991), codified as 10 C.F.R. Pt. 54. Four years later, after another rulemaking proceeding, the Commission modified its rule in some respects. See 60 Fed. Reg. 22,461 (1995). The final rule provided that licensees could seek renewal up to 20 years before license expiration. See 56 Fed. Reg. at 64,963. This lead time recognized that public utility licensees would need 10 to 14 years to plan and build replacement power plants in the event that the NRC refused to renew a license for a currently operating nuclear plant. *Ibid.*

The Commission's License Renewal Rule requires notice in the Federal Register of the opportunity for a

hearing on an application for license renewal. 10 C.F.R. 54.27. The license renewal hearing is a formal adjudication conducted before a three-judge Atomic Safety and Licensing Board, and is governed by the Commission's rules of practice, 10 C.F.R. Pt. 2, Subpt. G. See 10 C.F.R. 2.105, 2.700. In view of the anticipated large number of license renewal applications, and in response to recent experience and criticism of its procedures from Congress (see H.R. Rep. No. 581, 105th Cong., 2d Sess. 135 (1998)), the Commission issued a policy statement in July 1998, announcing its intention to modify procedures for license renewal hearings. See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18 (1998), *reprinted at* 63 Fed. Reg. 41,872 (1998).

The Commission's policy statement observed that "the opportunity for hearing should be a meaningful one." 63 Fed. Reg. at 41,873. But it recognized that "applicants for a license are also entitled to a prompt resolution of disputes concerning their applications." *Ibid.* Accordingly, the Commission encouraged hearing boards and officers to use "current rules and policies" as a "means to achieve a prompt and fair resolution of proceedings," and to "establish schedules for promptly deciding the issues * * *, with due regard to the complexity of the contested issues and the interests of the parties." *Ibid.* To accomplish those objectives, the policy statement stated that requests for extensions of time should be granted only "when warranted by unavoidable and extreme circumstances." *Id.* at 41,874.[2]

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[2] The policy statement also addressed the requisite contentions of those seeking NRC hearings. 63 Fed. Reg. at 41,874. The Commission explained that in earlier cases and in a 1989 rulemaking it

2. a. In April 1998, Baltimore Gas & Electric Company asked the NRC to renew its current licenses to operate the Calvert Cliffs nuclear power plant. Pet. App. 4a, 47a. The Commission promptly published notice of the application and, in July 1998, published notice of an opportunity for third parties to intervene and seek a formal hearing on the renewal application. *Id.* at 4a-5a, 49a. Only one potential intervener, petitioner, sought a hearing. The petition to intervene was filed shortly after the NRC issued its policy statement specifying that extensions would be allowed only in "unavoidable and extreme circumstances." *Id.* at 6a.

b. In August 1998, the Commission referred petitioner's hearing request to the NRC's Licensing Board. Pet. App. 6a, 49a. The referral order gave the Board a proposed schedule with a goal of resolving the Calvert Cliffs proceeding within about two and one half years, outlined a number of case management tools it expected the Board to employ—including a directive not to grant extensions of time "absent unavoidable and extreme circumstances"—and called attention to the Commission's recent policy statement on expediting cases. *Id.* at 6a, 115a-122a. The Licensing Board immediately issued an initial prehearing order giving petitioner three weeks, until September 11, 1998, to file the required contentions detailing its concerns. *Id.* at 6a, 50a. The order stated that any extension requests should be

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had made clear that to obtain a hearing potential interveners must support their contentions with specificity, and could not rest on mere conclusory assertions. See *ibid.* (citing 10 C.F.R. 2.714(b)(2)(iii)). At the same time, however, the Commission stated that the "factual support necessary" to show that a genuine dispute exists "need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." *Id.* at 41,874 n.1.

submitted at least three business days prior to the due date and "demonstrate 'unavoidable and extreme circumstances.'" *Id.* at 6a.

Petitioner filed a series of motions with the Board and the Commission, arguing that the Commission's policy statement, referral order, and hearing schedule unfairly restricted the time to frame its contentions. Pet. App. 6a-8a, 50a-51a. In particular, petitioner argued that requests for extensions should be governed by the "good cause" standard set forth in 10 C.F.R. 2.711(a). Pet. App. 7a. The Commission found the challenged procedural orders well within the agency's power to manage its own docket and denied petitioner's motions. In particular, the Commission concluded that the unavoidable-and-extreme circumstances standard "simply gives content . . . to [the] rule's general 'good cause' standard." *Ibid.* (quoting NRC order). The Licensing Board denied petitioner's request for an extension of time, finding that petitioner had failed to demonstrate unavoidable and extreme circumstances warranting an extension. *Ibid.*

Petitioner did not file any contentions on September 11, 1998—the deadline for doing so. Instead, it filed a petition with the Commission objecting to the denial of its request for extension and arguing that the deadline should be September 30, 1998. While standing by the extreme-and-unavoidable-circumstances standard, the Commission nevertheless agreed to give petitioner an extension until September 30 to file the requisite contentions. Pet. App. 94a-97a, 103a-114a. The Board subsequently gave petitioner an additional extension of one day, until October 1, 1998, in recognition of a religious holiday. *Id.* at 8a, 51a. The October 1 deadline came and went with no contentions filed. *Id.* at 8a, 51a. On October 13, 1998, petitioner filed two late conten-

tions relying on references to NRC staff inquiries to Baltimore Gas and Electric Company. *Id.* at 9a, 52a. The Board dismissed the petition to intervene on the grounds that petitioner failed "to establish cause" for an extension and failed to show that it met the standard for late-filed contentions. *Id.* at 9a, 77a-93a.

c. On administrative appeal, the Commission affirmed. Pet. App. 47a-76a. The Commission found that petitioner had "had more than five months [from the filing of the license renewal application] within which to prepare contentions, yet it offered no meaningful explanation of the grounds for its opposition" to the Calvert Cliffs license renewal. *Id.* at 59a. In response to petitioner's argument that it should have received additional time under the Commission's "good cause" standard, the Commission indicated that it considered its "construction of 'good cause' to require a showing of 'unavoidable and extreme circumstances' * * * a reasonable means of avoiding undue delay in this important license renewal proceeding." *Id.* at 58a. The Commission further found that petitioner's "complete failure to provide specific information about its concerns precluded any finding that 'good cause,' in a meaningful sense, justified [petitioner's] requested extensions of time." *Id.* at 59a. The Commission also agreed that petitioner's contentions were insufficient. *Id.* at 69a-73a.

3. a. Petitioner filed a petition for review of the Commission's order with the District of Columbia Circuit. A divided panel of the court of appeals (Pet. App. 24a-46a) held that the Commission's unavoidable-and-extreme circumstances standard "is effectively an amendment of the Commission's regulations made without notice and comment required by the Administrative Procedure Act." *Id.* at 25a. The panel vacated

the Commission's decision and remanded for consideration of "whether [petitioner] had 'good cause' for an extension of time to file contentions." *Id.* at 46a. Ten days later, however, the court of appeals (*id.* at 20a-23a) on its own motion vacated the divided panel decision and set the case for further briefing and rehearing.

Chief Judge Edwards, who had joined the initial panel decision, concurred in rehearing because he "fear[ed] that the original (now vacated) majority opinion fails to address some critical issues in this case." Pet. App. 21a. As he explained, "[t]hese issues were not the focus of the arguments during the first hearing before the court, so it is unsurprising that they were lost in our haste to issue an opinion before our colleague, Judge Wald, departed from the court." *Ibid.*[3] Chief Judge Edwards thought these issues "too important to ignore once uncovered." *Ibid.* And "[a]fter considering this matter further," he concluded that there is "good reason" to believe that the initial panel was "mistaken" in its view that the Commission acted pursuant to a substantive rule requiring notice and comment rulemaking. *Ibid.*

b. Following rehearing, the court of appeals (Pet. App. 1a-19a) denied the petition for review, holding that the Commission properly denied intervention on the ground that petitioner "failed to submit the required contentions within the prescribed deadline." *Id.* at 4a. The court of appeals stated at the outset that almost all of petitioner's arguments are "plainly meritless." *Id.* at 10a. The sole issue warranting discussion was the claim that "the NRC erred in adopting and

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[3] Judge Wald authored the initial panel decision in this case, but shortly thereafter departed from the court.

applying an 'unavoidable and extreme circumstances' test, in lieu of a 'good cause' test, to assess requests for extensions of time." *Ibid.* The court rejected that claim too, however, because it concluded that "the Commission was fully justified in adopting the disputed test and, also, because [petitioner] suffered no prejudice in the Commission's application of the new standard." *Ibid.*

The court concluded that petitioner was "simply wrong" in claiming that the Commission lacked the authority to adopt the "unavoidable and extreme circumstances" test as an adjudicatory rule. Pet. App. 11a. On this issue, the court stated that it was "in complete accord with the Seventh Circuit's position that the NRC possesses the authority 'to change its procedures on a case-by-case basis with timely notice to the parties involved.'" *Ibid.* (quoting *City of West Chicago* v. *NRC*, 701 F.2d 632, 647 (7th Cir. 1983)). The court pointed out that there can be "no claim here that [petitioner] lacked timely notice of the new 'unavoidable and extreme circumstances' standard," since the Commission announced its intent to adopt the standard in its August 1998 policy statement, and petitioner "received express notice that the new standard would be applied in the Calvert Cliffs proceeding" in the prehearing order. *Ibid.*

Next, the court of appeals rejected the argument that adoption of the unavoidable-and-extreme-circumstances standard required notice and comment rulemaking. Pet. App. 12a-14a. The standard "embodies a procedural rule." *Id.* at 12a. As the court explained, "[t]he disputed agency action * * * merely altered a standard for the enforcement of filing deadlines; it did not purport to regulate or limit [petitioner's] substantive rights." *Ibid.* Such "agency housekeeping rules"

often reflect "a judgment about what mechanics and processes are most efficient," but "[t]his does not convert a procedural rule into a substantive one." *Ibid.* (quoting *JEM Broad. Co.* v. *FCC*, 22 F.3d 320, 327-328 (D.C. Cir. 1994)). As a procedural step, the NRC may "require[] parties who failed to meet otherwise reasonable deadlines to demonstrate compelling reasons before they could obtain any extensions of time beyond prescribed deadlines." *Id.* at 13a.

The "only remaining question" was whether the NRC's "new procedural standard" satisfies arbitrary and capricious review under the APA, and the court of appeals held that the standard "easily survives [such] review." Pet. App. 14a-15a. As the court explained, the "new procedural standard did not significantly or unreasonably change the regime pursuant to which requests for extensions of time are judged," but "merely refine[d] an existing procedural standard." *Id.* at 14a. Moreover, petitioner failed to show "detrimental reliance in this case," because it "had no basis upon which to assume that * * * deadlines automatically would be waived upon request pursuant to the old good cause standard." *Id.* at 14a-15a. In addition, the Commission "fully explained the need for expedited case processing" in its policy statement. *Id.* at 15a.

Finally, the court emphasized that petitioner "has offered absolutely nothing to show how the promulgation of the new rule, even if, arguendo, in error, resulted in prejudice or other cognizable harm to them." Pet. App. 16a. The Commission granted petitioner two extensions of time; yet when the twice-extended deadline (October 1, 1998) elapsed, petitioner failed to file the requisite contentions or anything supporting another extension of time. *Id.* at 17a. Accordingly, the court concluded that "[t]here can be no doubt that, on

the record before us, [petitioner] suffered no prejudicial error when the Commission adopted the new 'unavoidable and extreme circumstances' standard." *Id.* at 19a.

ARGUMENT

The court of appeals' decision is correct and does not conflict with the decision of any other court of appeals. Petitioner was given ample opportunity to intervene in the license renewal proceeding in this case, and failed to do so of its own volition. The court of appeals carefully considered petitioner's arguments and properly found not only that the Commission acted lawfully under the APA, but also that petitioner suffered no prejudice as a result of the agency actions about which it now complains. Review by this Court is not warranted.

1. Petitioner claims (Pet. 11) that this case presents "the following important question: whether the [APA]'s adjudication provisions apply to nuclear safety proceedings conducted under Section 189(a) of the Atomic Energy Act?"[4] The "adjudication provisions" referred to by petitioner are those governing formal, "on the record" agency hearings set forth in 5 U.S.C.

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[4] This question subsumes the first two questions presented in the petition. See Pet. i. There is no dispute that as a general matter the APA applies to the NRC; the Atomic Energy Act (AEA), 42 U.S.C. 2231, so provides. The basic question raised by petitioner here is whether NRC license renewal proceedings are governed by the formal hearing requirements of the APA. Contrary to the suggestion of petitioner (Pet. 11, 14), this issue does not resemble the one decided in *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978). In *Vermont Yankee*, the Court held that the courts may not impose on administrative agencies procedural requirements that go beyond statutory demands; in this case, by contrast, the court of appeals gave effect to the agency's own procedural rules (which were consistent with statutory requirements).

554, 556, and 557. See Pet. 11, 13, 17-25. The court of appeals' decision in this case does not mention let alone purport to decide the "important" APA issue framed by petitioner in this Court, and that is not surprising.

In license renewal proceedings for nuclear power plants, the Commission follows the formal adjudicatory procedures set forth in Subpart G of Part 2 of its rules of practice. See 10 C.F.R. 2.105, 2.700; *Philadelphia Newspapers, Inc.* v. *NRC*, 727 F.2d 1195, 1202-1203 (D.C. Cir. 1984). Significantly, the Subpart G rules—which governed the proceeding in this case—provide for a formal hearing with all the protections, and then some (such as the right to pre-hearing discovery, which is not guaranteed by the APA), of a formal, APA-"on the record" hearing. Compare 10 C.F.R. 2.700-2.788 with 5 U.S.C. 554, 556-557. See also *Union of Concerned Scientists* v. *NRC*, 735 F.2d 1437, 1444-1445 n.12 (D.C. Cir. 1984) (NRC "regulations governing licensing proceedings provide for hearing procedures that comport with or even surpass those required by the APA for 'on the record' adjudication.").

Because the NRC's Subpart G rules are at least as protective as those governing "on the record" adjudications under the APA, the District of Columbia Circuit has specifically declined in the past to decide whether the APA's formal adjudication requirements govern NRC licensing proceedings. See *Nuclear Info. & Res. Serv.* v. *NRC*, 969 F.2d 1169, 1180 (D.C. Cir. 1992) (en banc); *Union of Concerned Scientists* v. *NRC*, 920 F.2d 50, 53 (D.C. Cir. 1990).[5] And in this case, the court of

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[5] Petitioner suggests (Pet. 11) that the state of the law is in "disarray" on this issue. See Pet. 18-22. That is not so. Neither the court of appeals below nor any other decision cited by petitioner specifically addresses the question whether the APA's formal

appeals did not even mention that here-academic issue.[6] This Court typically does not consider questions that

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hearing requirements apply to nuclear power plant license renewal proceedings. In *City of West Chicago* v. *NRC*, 701 F.2d at 641-645, the Seventh Circuit held that the APA's formal hearing requirements are not applicable in a materials license proceeding. There is no contrary decision. Petitioner quibbles with statements in various District of Columbia Circuit decisions discussing the application of the APA in NRC proceedings. But none of those decisions squarely decided the APA issue petitioner presents here; they do not conflict with the decision below (which did not discuss that issue); and any intra-circuit tension that may exist between statements in the opinions cited by petitioner may be resolved by the District of Columbia Circuit—in a case actually presenting the APA issue petitioner seeks to raise.

[6] Petitioner (Pet. 13, 18, 23-25) attempts to ground its APA argument in a footnote in the Commission's final decision. See Pet. App. 60a-61a n.4. The footnote responded to petitioner's complaint that the Commission violated the APA by not taking into account the "convenience and necessity of the parties." 5 U.S.C. 554(b). The Commission stated that it did "not doubt our obligation to treat all parties to our proceedings fairly," but emphasized that its case management initiatives had not "prejudiced [petitioner's] right to participate meaningfully" in the Calvert Cliffs adjudication. Pet. App. 60a n.4. In addition, the Commission stated that, "as a formal matter, one of the APA provisions cited by [petitioner] (5 U.S.C. §554(b)) applies only to agency proceedings required by statute to be 'on the record,'" and that "[t]he Commission's position * * * is that NRC licensing proceedings are not governed by APA requirements for formal on-the-record adjudications, except in particular situations where Congress has so mandated." *Ibid.* In reiterating its position on this issue, the Commission was simply ensuring that its use of formal procedures for license renewal proceedings—which meet or exceed those followed under the APA—would not be deemed as an abandonment of its prior position that neither the APA nor the AEA requires it to conduct an "on the record" hearing. In any event, as discussed, the court of appeals did not address the validity of the

were not addressed or decided below. See *NCAA* v. *Smith*, 525 U.S. 459, 470 (1999) ("we do not decide in the first instance issues not decided below"); *Peralta* v. *Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988) (The Court's customary practice is to "deal with the case as it came here and affirm or reverse based on the ground relied on below."). There is no reason to make an exception here.

2. The court of appeals did address the question whether the Commission properly applied its unavoidable-and-extreme-circumstances standard in this case, but that factbound contention does not warrant certiorari either. Petitioner's principal claim (Pet. 15-16) is that the Commission should have assessed petitioner's extension requests under the "good cause" standard rather than the "unavoidable and extreme circumstances" standard. The court of appeals correctly held that the Commission permissibly applied the latter standard and that, in any event, petitioner did not suffer any "prejudice or other cognizable harm" (Pet. App. 16a) as a result of the application of that standard.[7]

As the court of appeals stressed, the NRC, like other agencies, possesses the discretion to modify its procedural rules, so long as it provides "timely notice" of rule

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Commission's position on this issue, or delve into the meaning of the footnote in the agency decision on which petitioner now relies.

[7] Even if the Commission improperly applied the unavoidable-and-extreme-circumstances test it properly rejected petitioner's application for failure to meet specificity requirements in stating its contentions. See Pet. App. 69a-73a; *id.* at 59a ("[T]hroughout this proceeding, [petitioner] has provided the Board and the Commission only the scantiest of details regarding its health-and-safety or environmental concerns."). That provides an additional reason for denying review. See note 2, *supra*.

changes. Pet. App. 11a. The courts of appeals are "in complete accord" on this point. *Ibid.* (citing *City of West Chicago* v. *NRC*, 701 F.2d at 647). See also *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. at 544 (a "very basic tenet of administrative law [is] that agencies should be free to fashion their own rules of procedure"); *American Farm Lines* v. *Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) ("It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it."). And the Commission plainly provided interested parties—including petitioner—timely notice of the unavoidable-and-extreme-circumstances standard, both in the August 1998 policy statement and its scheduling order for the Calvert Cliffs license renewal proceeding. See Pet App. 11a.

The court of appeals also correctly stated that the APA's notice-and-comment rulemaking requirements do not apply to procedural rules. See 5 U.S.C. 553(b)(3)(A); *Lincoln* v. *Vigil*, 508 U.S. 182, 196 (1993). Furthermore the court correctly found that the Commission acted lawfully in taking steps to expedite nuclear power plant license renewal proceedings. The Commission's new extension-of-time standard lies well within the "wide latitude an agency has in designing its own proceedings." Pet. App. 15a (citing *Vermont Yankee*, 435 U.S. at 524-525). And the Commission provided ample explanation for adopting this new standard and, more generally, attempting to improve and streamline the procedures governing license renewal proceedings. See *id.* at 53a-54a.

Moreover, application of the unavoidable-and-extreme-circumstances standard did not prejudice petitioner. Pet. App. 16a-19a. See 5 U.S.C. 706 ("[D]ue account shall be taken of the rule of prejudicial error."). As the court of appeals pointed out, petitioner received "two extensions of time in which to file contentions" (Pet. App. 19a), and when the deadline for contentions (as extended) ultimately arrived, petitioner filed neither contentions nor an additional supported request for extending the deadline—a third time. *Id.* at 17a. Instead of an extension-of-time motion, petitioner filed a "Motion to Vacate and Re-schedule the Pre-Hearing Conference" that invoked a supposed right to delay contention-filing until after Baltimore Gas & Electric Company answered then-pending inquiries from the NRC staff. But, as the court of appeals explained, "[i]t is clear that, under prevailing law" petitioner was not entitled to any pre-contention "discovery." *Ibid.*

In short, petitioner cannot plausibly attribute its failure to file timely and adequate contentions to the challenged extension standard, and petitioner has provided no reason why it is necessary for this Court to review the court of appeals' factbound determination that prejudice was lacking in this case.

3. The NRC has broad discretion to ensure that its adjudications move along promptly and efficiently from the perspective of all interested parties, and to administer those procedures as it deems appropriate in individual proceedings. Here, the Commission acted reasonably—and with notice to all—in its effort to manage and schedule the Calvert Cliffs license renewal proceeding. Its actions, moreover, resulted in no "prejudice or other cognizable harm" to petitioner. Pet. App. 16a. Despite early availability of the license renewal application (more than two months prior to the

formal hearing notice), advance warning of the Commission's determination to resolve license renewal cases expeditiously and to allow extensions of time only in "unavoidable and extreme" circumstances, and an agency scheduling order that coupled with extensions of time gave petitioner at least 75 days after the hearing notice for specifying any safety or environmental concerns (*id.* at 13a, 63a), petitioner failed to present a single particularized complaint. In these circumstances, the court of appeals correctly determined that petitioner's intervention request was properly denied by the Commission, and further review by this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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